MALAYSIA BORNEO FINANCE CORP (M) BHD

v.

MALAYAN PRODUCE CO SDN BHD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL MALIK ISHAK J
[ORIGINATING SUMMONS NO: F704-1977]
31 DECEMBER 1999

CIVIL PROCEDURE: *Amendment - Application for leave to amend name of applicant - Whether applicant was seeking to be replaced by another entity - Whether application can be made after judgment - Mode of application - Whether by way of originating motion - Rules of the High Court 1980, O. 5 r. 3, O. 20 r. 5(3)*

This was an application by way of summons in chambers by the applicant to amend the originating summons and all the documents filed in this proceeding to replace the applicant by the name of "Malaysia Borneo Finance Corp (M) Bhd" to "Pengurusan Danaharta National Bhd" in accordance with the vesting certificate issued on 6 May 1999 and that the public auction scheduled be proceeded with in the name of "Pengurusan Danaharta National Bhd".

The respondent opposed this application on the grounds *inter alia* that the applicant was seeking to be replaced by another entity and that the wrong mode was adopted, *ie*, by making this application by way of summons in chambers instead of originating motion.

Held:

[1] Pengurusan Danaharta National Berhad, though a separate entity, had by law taken over the whole affairs of the applicant. Since the assets of the applicant were vested in Pengurusan Danaharta National Berhad by statutory command, effect must be given to it by replacing the name of the applicant with the same.

[2] The courts have unfettered and wide powers to allow amendments to the writ or pleadings at any stage of the proceedings.

[3] Where an Act does not specify the mode of the application, an application may be made in any form in which the court may be moved.

[4] The use of the procedure of an originating motion is only available when it is prescribed by the rules or any written law and moreover, interlocutory application unnecessarily commenced by motion may be penalised by the imposition of costs.

[5] The usage of summons in chambers was a correct procedure and even if the procedure adopted was wrong it could not bar this court from hearing it since every omission or mistake in practice or procedure is a mere irregularity so long as it does not cause injustice.

[6] To understand an Act better, the preamble and the long title can be referred to.

[Application allowed.]

Case(s) referred to:

Armitage v. Parsons [1908] 2 KB 410 ***(refd)***
Attorney-General v. Birmingham Corp [1912] 15 Ch D 423 ***(refd)***
Camden (Marquis) v. IRC [1914] 1 KB 641 ***(refd)***
Crespigny v. Wittenoom [1792] 4 TR 790 ***(refd)***
Government of State of Pahang v. Tengku Abdul Aziz & Anor [1978] 2 MLJ 34 ***(refd)***
Harkness v. Bell's Asbestos and Engineering Ltd [1976] 2 QB 729 ***(refd)***
Income Tax Commissioners v. Pemsel [1891] AC 531 ***(refd)***
Karpal Singh v. Sultan of Selangor [1988] 1 MLJ 64 ***(refd)***
Keith v. Butcher [1884] 25 Ch D 750 ***(refd)***
Lewis v. Packer [1960] 1 WLR 452 ***(refd)***
Nanyang Development (1966) Sdn Bhd v. How Swee Poh [1969] 1 MLJ 232 ***(refd)***
Ong Beng Cheng v. Chiu Wing Wa & Ors [1993] 4 CLJ 591 ***(refd)***
Punton v. Ministry of Pensions And National Insurance [1963] 1 All ER 275 ***(refd)***
Pyrene Co v. Scindia Navigation Co [1954] 2 QB 402 ***(refd)***
R v. Peters [1886] 16 QBD 636 ***(refd)***
Re CHS [1997] 3 MLJ 152 ***(refd)***
Re City Housing Trust Ltd [1942] Ch 262 ***(refd)***
Re Gist [1904] 1 Ch 398 ***(refd)***
Salkeld v. Johnson [1848] 2 Ex 256 ***(refd)***
Shippam Ltd v. Princes Buitoni Ltd [1893] FSR 427 ***(refd)***
Singh v. Atombrook Ltd [1989] 1 All ER 385 ***(refd)***
Sussex Peerage Claim [1844] 11 C1 & F85 ***(refd)***
The Dictator [1892] 64 ***(refd)***
The Duke of Buccleuch [1892] 20 ***(refd)***
The Golden Mariner [1990] 2 Lloyd's Rep 215 ***(refd)***

Legislation referred to:

Pengurusan Danaharta Nasional Berhad Act 1998, s. 14(1), (2), (4)(j)
Rules of the High Court 1980, O. 1 r. 4(1), O. 2 r. 1, O. 5 rr. 1, 3, 4, 5, O. 15, O. 17 r. 3, O. 18 r. 19(3), O. 20 rr. 5(3), 11, O. 67 r. 2, O. 75 r. 2, O. 84 r. 1, O. 88 r. 2(1)

Other source(s) referred to:

The Concise Oxford Dictionary, 9th edn, p 451
The Supreme Court Practice, 1985, vol 1, p 352

For the applicant - Jeyasingam Balasingam; M/s Ghazi & Lim
For the respondents - T Gunaseelan; M/s Gunaseelan & Assocs

Reported by AG Kalidas

JUDGMENT

Abdul Malik Ishak J:

This is an application by way of a summons in chambers by the applicant in encl. 250 to amend according to prayer (a) the originating summons and all the documents filed in these proceedings so that the applicant by the name of "Malaysia Borneo Finance Corp (M) Bhd" be replaced by "Pengurusan Danaharta Nasional Bhd" in accordance with the vesting certificate that was issued on 6 May 1999. Enclosure 250 of prayer (b) also prays for an order that the public auction scheduled for 30 June 1999 be proceeded with in the name of "Pengurusan Danaharta Nasional Bhd". Enclosure 250 of prayer (c) also seeks for costs in the cause and prayer (d) thereof seeks for any other relief that this court deems fit and proper.

The application in encl. 250 is supported by an affidavit of Mr. Jeyasingam Balasingam that was affirmed on 10 June 1999 and filed on 15 June 1999 as seen in encl. 249 and not encl. 251 as suggested. The vesting certificate and the schedule thereto were annexed and marked as exh. "JB1" of encl. 249. The vesting certificate certifies that from the date of the vesting, namely 29 April 1999, all present and future rights, title and interest will be vested in "Pengurusan Danaharta Nasional Berhad." For convenience, the vesting certificate and the schedule thereto will now be reproduced as its reproduction would certainly give a better understanding of the application in encl. 250:

VESTING DATE CERTIFICATE NUMBER

29 April 1999 1999-00153-DA(l/2)

PENGURUSAN DANAHARTA NASIONAL BERHAD
(No. Syarikat: 464363W)

VESTING CERTIFICATE

This is to certify that, on and from the vesting date stated above, all present and future rights, title and interest in and disclosed obligations with respect to the assets described in the Schedule vest in Pengurusan Danaharta Nasional Berhad free of (from) any encumbrance or claim save for any registered interest prevailing as at the vesting date and disclosed claims.

This certificate is issued pursuant to section 14 of the Pengurusan Danaharta Nasional Berhad Act, 1998. A word or phrase used in this certificate has the meaning given to it in that Act.

Issued under seal on 6 May 1999

SEAL

Sgd. (Illegible)	Sgd. (Illegible)
...	...
Director	Director/Secretary

SCHEDULE

All the rights, title and interest of MBf Finance Berhad (the 'Seller') in:

(1) the following documents (each a 'Transaction Document'):

(a) **Assignment** dated 18 May 1976 between the Seller and Malayan Produce Co. Sdn. Bhd. ('MPC').

(b) **Loan Agreement** dated 31 March 1976 between the Seller and MPC.

(c) **Loan Agreement** dated 1 April 1976 between the Seller and MPC.

(d) **Assignment** dated 27 December 1976 between the Seller and Krishna Kumar s/o TN Sharma.

(e) **Charge** dated 27 December 1976 between Krishna Kumar s/o TN Sharma and the Seller, registered under Perserahan No. 3549/77, Jilid 105 Folio 166, under which Krishna Kumar s/o TN Sharma charged in favour of the Seller all that land together with all buildings and fixtures held under:

(i) Lot No. 2838, Geran 1272, Mukim 18, Daerah Timur Laut, Pulau Pinang;

(ii) Lot 503, Geran 35734, Bandar Georgetown Seksyen 14, Daerah Timur Laut, Pulau Pinang;

(iii) Lot 504, Geran 35735, Bandar Georgetown Seksyen 14, Daerah Timur Laut, Pulau Pinang

pursuant to a first fixed charge.

(f) **Guarantee** dated 18 May 1976 between Krishna Kumar s/o TN Sharma and the Seller under which Krishna Kumar s/o TN Sharma guaranteed the obligations of MPC.

(g) **Guarantee** dated 31 March 1976 between Krishna Kumar s/o TN Sharma and Mohd Idris SM Mohd Yusoff Rowther and the Seller under which Krishna Kumar s/o TN Sharma and Mohd Idris SM Mohd Yusoff Rowther guaranteed the obligations of MPC. Mohd Idris SM Mohd Yusoff Rowther was subsequently released from the Guarantee pursuant to a consent order dated 18 September 1981.

(1) any credit facility (as defined in section 2 of the Pengurusan Danaharta Nasional Berhad Act, 1998) made available by the Seller under a Transaction Document; and

(2) any security or property (both as defined in section 2 of the Pengurusan Danaharta Nasional Berhad Act, 1998) described hereinabove or otherwise held by or provided for the benefit of the Seller under a Transaction Document.

SEAL

Sgd. (Illegible)	Sgd.(Illegible)
...	...
Director	Director/Secretary

Mr. T Gunaseelan, learned counsel for the respondent, argues that the applicant is seeking to be replaced by another entity. An "entity" is defined in *"The Concise Oxford Dictionary"*, 9th edn, thumb index edition at p. 451 as:

> a thing with distinct existence, as opposed to a quality or relation, a thing's existence regarded distinctly; a thing's essential nature.

The question to pose is whether Pengurusan Danaharta Nasional Berhad is a different entity from that of the applicant who goes by the name of Malaysia Borneo Finance Corp (M) Bhd? At first blush, the difference in the name shows that it is a different entity. But on closer scrutiny the position may not be so simple as one would have thought. The preamble to the Pengurusan Danaharta Nasional Berhad Act 1998 makes for interesting reading. It states as follows:

> An Act to provide special laws for the acquisition, management, financing and disposition of assets and liabilities by the Corporation, the appointment of special administrators with powers to administer and manage persons whose assets or liabilities have been acquired by the Corporation and for matters connected therewith or incidental thereto.

and the long titles further elaborates the purpose behind the setting up of Pengurusan Danaharta Nasional Berhad:

> WHEREAS special provisions are required in the public interest to assist financial institution by removing impaired assets, to assist the business sector by dealing expeditiously with financially distressed enterprises and to promote the revitalisation of the nation's economy by injecting liquidity into the financial system, such goals to be achieved through the acquisition, management, financing and disposition of assets and liabilities:
>
> AND WHEREAS legislation is the only means by which the acquisition, management, financing and disposition of assets and liabilities can be implemented promptly, efficiently and economically for the public good:

> AND WHEREAS legislation is the only means by which special administrators may be appointed expeditiously to administer and manage persons whose assets or liabilities have been so acquired:
>
> AND WHEREAS Pengurusan Danaharta Nasional Berhad has been established as a corporation incorporated under the Companies Act 1965 for such purposes:

It is a noble gesture on the part of the government to set up Pengurusan Danaharta Nasional Berhad. The applicant – Malaysia Borneo Finance Corp (M) Bhd, must be in trouble financially and Pengurusan Danaharta Nasional Berhad has come to its aid by injecting liquidity and managing its affairs. The preamble according to Pollock CB in *Salkeld v. Johnson* [1848] 2 Ex 256 at p. 283 is "undoubtedly part of the Act." In *Crespigny v. Wittenoom* [1792] 4 TR 790 at p. 793 per Buller J; and in *Pyrene Co v. Scindia Navigation Co* [1954] 2 QB 402 at p. 421 per Devlin J – both the learned judges were at tangent and they aptly said that if the meaning of an enactment is unclear "the preamble may be resorted to to explain it." In the *Sussex Peerage Claim* [1844] 11 C1 & F 85 at p. 143, Tindal CJ observed:

> If any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the statute and to have recourse to the preamble, which, according to Chief Justice Dyer in *Stowel v. Lord Zouch* [1562] Plowd 353 at page 369, is 'a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress'.

and this very passage was quoted with approval by Lord Halsbury LC in *Income Tax Commissioners v. Pemsel* [1891] AC 531 at p. 542. In my judgment, the preamble and the long titles to the Pengurusan Danaharta Nasional Berhad Act 1998 must be referred to and they would certainly assist me in understanding the said Act better. Having said that, I will now venture to say that Pengurusan Danaharta Nasional Berhad, though a separate entity, has by law taken over the whole affairs of the applicant – Malaysia Borneo Finance Corp (M) Bhd. The vesting certificate is a powerful instrument. All the assets of the applicant have been acquired by Pengurusan Danaharta Nasional Berhad. Section 14(1) of the Pengurusan Danaharta Nasional Berhad 1998 enacts in clear terms the acquisition of the assets:

> The Corporation may acquire any asset, whether such asset is held by the seller alone or jointly with any other person and upon such acquisition such asset shall, on, and from the vesting date, vest in the corporation either alone or jointly with that other person, as the case may be.

and its effect is so powerful, so overwhelming that it is binding on any person notwithstanding the provisions of the Civil Law Act 1956 or any other law. This is clearly spelt in s. 14(2) of the Pengurusan Danaharta Nasional Berhad Act 1998:

> A vesting under subsection (1) shall have effect according to the provisions of this Part and, notwithstanding the provisions of the Civil Law Act 1956 or any other law, shall be binding on any person thereby affected in the manner provided in this Part.

I do not propose to reproduce the whole of s. 14 of the Pengurusan Danaharta Nasional Berhad Act 1998 because it can easily be referred to by resorting to the said Act. All I need say is this: that s. 14 of the Pengurusan Danaharta Nasional Berhad Act 1998 shows the statutory fangs of the Pengurusan Danaharta Nasional Berhad. Section 14(4)(j) of the Pengurusan Danaharta Nasional Berhad Act 1998 allows a judgment or award obtained by the applicant in relation to the assets itemised in the schedule which was not fully satisfied before the vesting date to be enforceable by the Pengurusan Danaharta Nasional Berhad. It appears that Pengurusan Danaharta Nasional Berhad has two main objectives. Firstly, to remove the distraction of non-performing loans considered as assets from financial institutions thereby allowing them to focus their attention on their core business activity of lending money to viable borrowers. Secondly, to maximise the recovery value of the acquired assets. With this scenario in mind, it is not surprising that the applicant filed encl. 250.

Now, since the assets of the applicant as set out in the schedule as reproduced earlier are vested in Pengurusan Danaharta Nasional Berhad, it would be appropriate that the name of the applicant be replaced by Pengurusan Danaharta Nasional Berhad. All these assets are vested in Pengurusan Danaharta Nasional Berhad by statutory command and effect must be given to it. In my judgment, Pengurusan Danaharta Nasional Berhad is easily identifiable with the applicant and when one refers to Pengurusan Danaharta Nasional Berhad, in the context of the present case, one would invariably refer to the applicant and to no one else. That disposes of the issue of a separate entity.

Next, the applicant through Mr. Jeyasingam Balasingam submits and maintains that the mode of application in encl. 250 by way of a summons in chambers is the correct mode whereas Mr. T. Gunseelan holds the opposite view and he says that the applicant should proceed by way of a notice of motion. As a basis for his submission, Mr. T. Gunaseelan relies on a passage that appears in "*The Supreme Court Practice*", 1985, vol. 1, at p. 352 where it states:

> 20/11/4 Mode of application: Where the order is made in Court, by motion in the Court which made the order (*Tucker v. New Brunswick Co* [1890] 44 Ch D 249; *Milson v. Carter* [1893] AC 638) but in Q.B.D. application is made to the Court which made the order without formal notice of motion. Notice to the other parties is given formally, and, upon the clerk of the Lists being informed, the case will be placed in the Daily Cause List on a day convenient to the Judge and the parties and marked 'To be mentioned.' Where C.A. made the order, application is made to it (*General Share Co v. Wetley Brick Co.*

> [1882] 20 ChD 130; *Re Swire* [1885] 30 Ch D 239). Where the order is made in chambers, the application may be made by summons. In any case notice must be given to the other side. Notwithstanding the wording of this rule, in certain cases application is *ex parte* to a Master.

and O. 20 r. 11 of the Rules of the High Court 1980 ("RHC") relates to:

> Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court by summons without an appeal.

That passage as reproduced and relied upon by Mr. T. Gunaseelan deals entirely with an amendment of a judgment or order arising out of a clerical mistake, accidental slip or omission. The application in encl. 250 is of a different nature and complexion. It is merely to amend and substitute the applicant with Pengurusan Danaharta Nasional Berhad with effect from the date of vesting and that would be on 29 April 1999. There was no clerical mistake nor accidental slip or omission when the applicant filed encl. 250. It is misconceived on the part of Mr. T. Gunaseelan when he submits that the mode of filing encl. 250 should be by way of a notice of motion. Order 20 r. 11 of the RHC is popularly known as the "slip rule". Its application is not at all encompassing and it is restricted to certain cases where there has been a clerical mistake or error arising from accidental slips or omissions by court officers (*Re Gist* [1904] 1 Ch 398) and the parties themselves (*Armitage v. Parsons* [1908] 2 KB 410). Even the mistake as to the date can be rectified under this order (*Re City Housing Trust Ltd* [1942] Ch 262). In the light of the vesting order, the applicant has no choice but to file the application in encl. 250. An application in the nature of encl. 250 may be made by summons in chambers. I repeat encl. 250 is by way of a summons in chambers and it is grounded on the originating summons *vide* no: F704-1977. It must be emphasised that an originating summons can never be considered to be a pleading and it is not a pleading: *Lewis v. Packer* [1960] 1 WLR 452; and *Ong Beng Cheng v. Chiu Wing Wa @ Chew Weng Wah & 4 Ors* [1993] 2 AMR 3313, HC, [1994] 1 AMR 41, 41. Order 1 r. 4(1) of the RHC states that a pleading does not include a petition, summons or preliminary act. But in relation to striking out, the rules apply as though the originating summons is in fact a pleading (*Karpal Singh v. Sultan of Selangor* [1988] 1 MLJ 64 and O. 18 r. 19(3) of the RHC).

An originating summons like the present case is a swift, expeditious and simple means of obtaining relief. The supporting evidence is invariably by way of an affidavit. The originating summons procedure would normally be adopted in the following ways:

(1) Order 5 r. 1 of the RHC states that subject to the provisions of any written law and of these rules, civil proceedings in the High Court may be begun by writ, originating summons, originating motion or petition.

(2) Order 5 r. 3 of the RHC sets out the circumstances wherein originating summons may be used. It states that proceedings by which an application is to be made to the High Court or a judge thereof under any written law must be begun by originating summons except where by these rules or by or under any written law the application in question is expressly required or authorised to be made by some other means. It also states that this rule does not apply to an application made in pending proceedings.

(3) For interpleader summons (O. 17 r. 3 of the RHC), proceedings in connection to infants (O. 84 r. 1 of the RHC), an application to register foreign judgments (O. 67 r. 2 of the RHC), an application for writ of distress (O. 75 r. 2 of the RHC), an application under the Companies Act 1965 unless otherwise specified (O. 88 r. 2(1) of the RHC), etc, etc.

(4) To construe and interpret the construction of any written law or document (*Punton v. Ministry of Pensions And National Insurance* [1963] 1 All ER 275, [1963] 1 WLR 186 CA; and O. 5 r. 4 of the RHC).

For fear of repetition it is argued that encl. 250 should be filed by way of an originating motion and not by way of summons in chambers. It must not be forgotten that the use of the procedure of an originating motion is only available when it is prescribed by the rules or any written law (O. 5 r. 5 of the RHC). The Federal Court in *Nanyang Development (1966) Sdn Bhd v. How Swee Poh* [1969] 1 MLJ 232, [1970] 1 MLJ 145 held that where an Act do not specify the mode of the application, then generally the application may be made in any form in which the court may be moved. Now, in filing encl. 250 by way of a summons in chambers, this court was moved into action and this court cannot simply ignore encl. 250 without considering its merits. To me, the application by way of an originating motion is a cumbersome procedure and expensive. The simple and inexpensive summons in chambers procedure as adopted by the applicant here is preferred and a wise choice. Moreover, interlocutory applications unnecessarily commenced by motion may be penalised by the imposition of costs: *Shippam Ltd v. Princes Buitoni Ltd* [1893] FSR 427.

In my judgment, the procedure adopted in filing encl. 250 by way of a summons in chambers is a correct procedure and this court is empowered to entertain it. Even if the procedure adopted is wrong it cannot bar this court from hearing it, after all every omission or mistake in practice or procedure is to be regarded as a mere irregularity so long as it does not cause an injustice

(*Harkness v. Bell's Asbestos and Engineering Ltd* [1976] 2 QB 729 at 736; and *Re CHS* [1997] 3 MLJ 152). Order 2 r. 1 of the RHC states as follows:

> (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.
>
> (2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.
>
> (3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these rules to be begun by an originating process other than the one employed.

and it should be given a liberal interpretation and be construed generously in favour of the applicant. Ong Hock Sim FJ aptly said in *Government of State of Pahang v. Tengku Abdul Aziz & Anor* [1978] 2 MLJ 34:

> ... we are inclined to the view that justice would not be served by acceding to objections on technicalities for noncompliance.

In the case of *The Golden Mariner* [1990] 2 Lloyd's Rep 215 at 223 which was a case on irregular service of a writ without an acknowledgment of service, McCowan LJ was very magnanimous when he said that the rule "should be given wide, though not unlimited effect." All along the courts have an unfettered and wide powers to allow amendments to the writ or pleadings at any stage of the proceedings and this very wide powers have been translated in the form of O. 20 r. 5 of the RHC which states as follows:

> (1) Subject to Order 15 rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.
>
> (2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court

may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.

(4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under paragraph (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ or the making of the counterclaim, as the case may be, he might have sued.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

A good example of the willingness of the court to amend would be the case of *Singh v. Atombrook Ltd* [1989] 1 All ER 385, [1989] 1 WLR 810, CA where the court allowed the plaintiff to amend the writ even after final judgment in the proceedings had been entered and that amendment was for the purpose of substituting the defendant's correct name for an incorrect name in which, through no fault of the plaintiff, the defendant had been sued. But my research goes further. It reveals the following state of affairs:

(a) The case of *"The Dictator"* [1892] p. 64 reveals that the court has the power to amend the claim on the writ after the court has determined liability in an admiralty action but leaves the question of damages to be assessed. Even at that stage the court still has that inherent power to add or substitute parties (*The Duke of Buccleuch* [1892] p. 20).

(b) In the case of *Keith v. Butche*r [1884] 25 Ch D 750 the court was indeed magnanimous when it allowed the addition of a party after judgment but before it was drawn up and entered.

(c) In 1912, the mood of the court changes and it swings to the extreme. In *Attorney-General v. Birmingham Corp* [1912] 15 Ch D 423 the court adopted a stern attitude and held that after final decree or judgment the judge of first instance cannot, or at all events will not, amend the pleadings or add new parties.

Must I accede to the application in encl. 250 bearing in mind that Justice James Foong had in civil suit no: S5-22-385-1996 decided and arrived at certain conclusions? The parties in that civil suit may be stated as follows:

Between

Dato' K K Sharma Malayan Produce Company ... Plaintiffs

And

MBf Finance Berhad
(dahulu dikenali sebagai Malayan Borneo Finance Corp (M) Bhd) ... Defendants

and James Foong J described the plaintiffs' claim in that case under section "a" as a "hogwash, unethical, devoid of merits, an attempt to confuse everyone and to frustrate the defendant, a complete waste of judicial time." In the present application before me, the roles of the parties switched. The plaintiffs in civil suit no: S5-22-385-1996 are now the respondents whereas the defendant in that civil suit is now the applicant. In civil suit no: S5-22-385-1996, James Foong J arrived at the following conclusions:

From the above set of events I draw the following conclusions:

(1) The alleged settlement on 23.2.1995 has always been upon the conditions that:

if no payment of the agreed sum of RM7.5 million, the auction of the charged lands will proceed – in accordance with the terms set out in Justice Wan Hamzah's Order of 22.9.1981.

(2) The defendant has never at any time abandoned the aforesaid condition, though at times, correspondence may not have reminded the plaintiffs of this.

(3) Absence of such reminders cannot be considered as a discardment since the very source from which this purported settlement of 23.2.1995 is based originates from this condition.

(4) On each failure of the plaintiffs to pay, indulgence and extension of time were given by the defendant, and the defendant has never relinquished the stated condition.

(5) The plaintiffs have failed to satisfy the condition to pay; it is they who have breached the settlement rather than the defendant.

By reasons aforesaid, I hereby dismiss prayer (b) of the plaintiffs' re-amended statement of claim.

Other prayers of the plaintiffs

> By reason of my dismissal of prayers (a) and (b) of the Re-amended Statement of Claim, prayers (c) (and) (d) must be dismissed. As for prayer (e) I find no grounds to substantiate this claim and I hereby dismiss it. As for prayer (f) this must be dismissed for reason of my rejection of prayer (a); further I am in absolute agreement with the defence that such application in this proceeding is wrong and unsustainable. Prayer (g) is certainly unsupported and invariably must be dismissed. I find no reason to grant prayer (h), and for prayers (i) and (j), these are totally preposterous and I reject them.

and I can only say that the present respondents are applying delaying tactics to settle the matter in accordance to the terms as set out in Justice Wan Hamzah's order dated 22 September 1981. Having perused through Justice James Foong's judgment, it is clear that his Lordship is not the judge of the first instance. Civil suit no: S5-22-385-1996 went through the hands of so many judges. I reckon I will not be the last judge to handle the present case. Many more judges will come after me. What is the purpose of having O. 20 r. 5(3) of the RHC as reproduced earlier if an application like encl. 250 to amend and replace the name of the applicant with that of Pengurusan Danaharta Nasional Bhd will not be entertained by me? Order 20 r. 5(3) of the RHC is not supposed to adorn the pages of the RHC. It is supposed to be applied vigorously by all judges and I too would do the same.

It is mischievous to submit that the application in encl. 250 is under O. 15 of the RHC because that order deals with joinder or misjoinder of parties. Enclosure 250 is filed not for the purpose of seeking to add or to exclude any party in the present proceedings. Mr. Jeyasingam Balasingam deposed in para. 5 of encl. 249 to the effect that the applicant's application by way of summons in chambers is a *bona fide* application to amend the name of the applicant and he says that it will not prejudice the respondents. I agree with the averments in para. 5 of encl. 249 and I may add that the proposed amendment is due to the extenuating circumstances and not due to the mistake or fault of any party. Pengurusan Danaharta Nasional Bhd has come to the assistance of the applicant and it is in the interest of justice that encl. 250 should be entertained. The website *vide* **http://www.danaharta.com.my/about/backgrd.html** carries a useful write up about Pengurusan Danaharta Nasional Bhd and it is worded as follows:

Background to Danaharta

> Danaharta was established by the Government to act as Malaysia's national asset management company and deal with the rising level of NPLs. Danaharta was incorporated under the Companies Act 1965 on 20 June 1998 and is wholly-owned by the Government through the Minister of Finance (Incorporated).

Organisation Structure

Danaharta is designed as a project organisation with a flat but flexible organisation structure. For the time being, at its heart lies the Operations Division that is complemented and supplemented by six other key Divisions. The scope of work and focus of all Divisions will change as Danaharta passes through the various phases of its lifecycle. A new Division that was set (up) on 1 July 1999 is the Property Division which would look at Danaharta's property assets which result from any foreclosure exercise. (see organisation chart)

How Danaharta Operates

Danaharta's mission is to remove NPL distractions from the banking system and maximise the recovery value of assets acquired. The objectives of Danaharta directly address these distractions facing the financial institutions in Malaysia today. Danaharta will, by purchasing and managing NPLs, allow financial institutions to refocus their attention on lending activities. Bankers can direct their efforts to normal commercial banking relationships, while Danaharta applies specialist skills to managing the NPLs.

By selling assets to Danaharta, the banks will replace the NPLs with bonds and cash at prices negotiated at arms' length, on a willing buyer and willing seller basis. In the meantime, Danaharta will apply specific expertise in asset management and financial restructuring to the assets acquired, including the potential for cash injections, in order to maximise the recovery value of the assets.

In view of its unique mission, special legislation was introduced to give Danaharta wider legal powers with regard to the acquisition, management and disposition of NPLs. The two most important pieces of legislation with regard to Danaharta's operations are:

Pengurusan Danaharta Nasional Berhad Act 1998 (Danaharta Act), which came into force on 1 September 1998; and

National Land Code (Amendment) Act 1998 (NLC (Amendment Act)), which came into force on 11 September 1998.

Treatment of Borrowers

Once Danaharta acquires an NPL from the selling bank, the borrower will then deal directly with Danaharta who will first assess the viability of the loan. For viable loans, Danaharta will undertake loan management strategies whereby Danaharta will seek to rehabilitate or restructure the loan. Loan repayments may be rescheduled or debt-equity conversion schemes put in place.

Where the NPL is not viable or if the loan management strategy fails, Danaharta will employ asset management strategies. Here, Danaharta will restructure the NPL either by managing the borrower or the underlying collateral. If Danaharta assesses that there is value in the company, Danaharta

may appoint a special administrator to take over the management and restructuring of the company. If not, Danaharta will likely foreclose on the collateral and manage it instead.

The preferred approach by Danaharta is to work together with the borrower to achieve a win-win solution.

For the purpose of determining the interest rate charged for credit facilities acquired by Danaharta, reference will be made to the base lending rate of Malayan Banking Berhad.

Benefits to the Economy

First, the banking sector will be revitalised. Upon removal of the NPLs and relieved of such distractions, the banks can concentrate on their main activity that is to lend to viable borrowers. This in turn would assist the national economic recovery effort.

Secondly, those companies whose NPLs have been purchased by Danaharta will receive expert attention. Danaharta will engage restructuring specialists who will work together with the borrower to strengthen these companies, seeking to maximise value in every instance.

Valuation

(Please refer to Appendix 3 of the Operations Report for the period from 20 June 1998 to 31 December 1998).

Payment

Danaharta will issue Government guaranteed bonds and cash to financial institutions as payment for the purchase of NPLs. The bonds, which are tradeable, will be issued with an initial tenor of five years and a roll-over option at Danaharta's discretion for up to another five years. These will be zero coupon bonds with yields approximating Malaysian Government Securities with similar tenor.

Timeline

The length of time for which Danaharta will operate will depend on the types of assets acquired and the economic environment. In Sweden, for example, Securum had an expected life of 10-15 years, but due to an economic recovery, managed to complete its task much earlier, in about six years. Given the size of the task, it is conservatively estimated that Danaharta would be here for between 5 to 7 years.

and with this background information, I have no qualms in allowing encl. 250. With the advert of the multi super corridors, the courts must be vigilant and willing to refer to the websites in adjudicating cases. The courts resort to the use of dictionaries in ascertaining the meaning of certain words. If dictionaries

play important roles in assisting the courts in the course of its work, the same can equally be said of websites. In the context of interpreting statutes, for instance, reference to dictionaries are quite common. Thus, Lord Coleridge once remarked in *R. v. Peters* [1886] 16 QBD 636 at p. 641:

> I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books.

Cozens-Hardy MR said in the same vein in the case of *Camden (Marquis) v. IRC* [1914] 1 KB 641 at p. 647:

> It is for the court to interpret the statute as best it can. In so doing the court may no doubt assist themselves in the discharge of their duty by any literary help they can find, including of course the consultation of standard authors and reference to well-known and authoritative dictionaries.

The time has now come for our courts to be bold and forward looking. The website in the internet contains invaluable information that can be tapped at the tip of one's finger and it should be utilised to the core. As I have demonstrated, the website carries the write up about Pengurusan Danaharta Nasional Bhd and it is the best source material of the day.

Be that as it may, in the course of delivering this judgment, the applicant advances an oral application to amend the prayer (a) of encl. 250 to include the words "selepas 29 April 1999" after the words " ... yang difailkan dalam tindakan ini." With this oral amendment, the amended prayer (a) of encl. 250 should read as follows:

> (a) Pemohon dibenarkan untuk meminda Saman Pemula dan segala dokumen-dokumen yang difailkan dalam tindakan ini selepas 29.4.1999 daripada 'Malaysia Borneo Finance Corp (M) Bhd' kepada 'Pengurusan Danaharta Nasional Berhad' (sepertimana Perakuan Perletakhakan yang dikeluarkan di bawah meteri pada 6.5.99).

and I allowed the oral amendment notwithstanding the objection. It is now clear as crystal that the applicant is only seeking to amend all court documents with effect from 29 April 1999. This meant that the application to amend the name of the applicant will not affect the judgment of Justice James Foong dated 27 November 1998 since the proposed amendment in encl. 250 will only take effect from the date of vesting as set out in the vesting certificate and that date would be on 29 April 1999. Thus, the judgment of Justice James Foong dated 27 November 1998 will not be disturbed.

In future, all public auctions pertaining to the present case that will be conducted will be in the name of "Pengurusan Danaharta Nasional Bhd" and not in the name of the applicant. It is wrong to even suggest that the application in encl. 250 is an attempt to do the impossible. Enclosure 250 does not seek to amend the judgment of James Foong J dated 27 November 1998.

For the reasons adumbrated above, I allow the applicant's application in encl. 250 particularly prayer (a) as amended, prayer (b), and prayer (c). The oral application to amend prayer (a) to encl. 250 comes squarely within prayer (d) thereof.